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SEARCHES AND ARREST WITHOUT WARRANT UNDER THE VIRGINIA PROHIBITION LAW.

The popular idea that the arrest of a person charged with misdemeanor can only be effected, without a warrant, where the offense is committed in the presence of an officer, is no longer law in Virginia, certainly with respect to the enforcement of the Prohibition statute; nor, in view of the amendatory statute of 1918, is it necessary to have a warrant when deputies and inspectors appointed by the Commissioner of Prohibition, makes searches and seizures in certain cases.

In view of the general ignorance of the citizen of the enlarged powers of officers, and in the absence of comment on the subject it does not seem amiss to discuss the broad step taken by the last legislature and its effect upon the law relative to misdemeanors as long established by statute and decision of our Court of Appeals.

As well stated by Mr. Benson, in his valuable work entitled "The Virginia Prohibition Act," § 111, "The general law is that, for felonies, or upon reasonable suspicion of felony, and for misdemeanors committed in their presence and which constitute breaches of the peace, constables or police officers may arrest the offender without a warrant and take him before a magistrate to be dealt with according to law; but, in general, in cases of misdemeanor such officers cannot, any more than private persons, justify the arrest of the offender without a warrant, when the offense is not committed in his presence." And in this connection the author cites the familiar case of Muscoe *v.* Com., 86 Va. 443. The authorities so far as can be learned have always adhered to the above principles in the enforcement of our criminal laws, but now that the legislature has seen fit to make a distinction in the enforcement of the laws when it comes to a violation of the Prohibition Act, it is not only well for the profession to acquaint the laymen with the change but to an-

alyze the subject lest we transcend the powers granted by the Constitution of our State.

Section 35 of the Act as amended by the last legislature provides as follows: "The deputies and inspectors appointed by the commissioner of prohibition provided for in this act shall have the power to administer oaths, take affidavits and examine records, and with a warrant, enter buildings, and *without a warrant* may enter freight yards, passenger depots, baggage and storage rooms of any common carrier, and may enter any train, baggage, express, Pullman, or freight car and any boat, automobile, or other conveyance, whether of like kind or not, where there is reason to believe that the law relating to ardent spirits is being violated. Such deputies and inspectors may call to their aid in securing such information and in making such search, any officer of the law whose duty it is to enforce the law prohibiting the sale of ardent spirits."

It is judged that the effect of this provision is to give the officers named not only the power to enter any train, Pullman, boat, automobile, etc., *without warrant,* but to make an arrest after such entry and carry away, *without warrant,* whatever they may find by reason of such search, thus enabling the deputies and inspectors to search and seize and arrest without a criminal or a search warrant, although § 22 provides that "Nothing herein contained shall be construed to permit the issuance of general warrants whereby an officer may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence." The result of a reading of the Act certainly gives one the impression that the deputies and inspectors, when they suspect that ardent spirits are being transported, may enter any boat, car, automobile, etc., and if they are fortunate enough to have suspected rightly, they may effect an arrest without warrant on the ground that having been permitted to make the search without warrant, they may make the arrest without warrant because they have been able to see the violation and the offense is thus brought within the rule of having been committed in the presence of the officer. Of course all that need be said by the deputy or inspector in case he

is wrong in his suspicions is that he was mistaken and the parties, humiliated and perhaps frightened by the experience, have no recourse and would be guilty no doubt of murder were they to kill an inspector who might board an automobile anywhere, and at any time, and under any circumstances, within this State.

From a constitutional standpoint it may be well said that it is a debatable question as to whether the legislature had power to pass the provision (Sec. 35) just discussed.

To determine the power granted Sec. 10 of the Constitution of Virginia would seem to be the criterion, and from a reading of the section it is not clear whether searches may be made without warrant, or whether it only aims to regulate the issuance of warrants. The section is as follows: "That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted."

On principle, however, and by interpretation of the U. S. Courts it would certainly seem that the weight of authority does not sanction searches without warrant, and while the provision of the Federal Constitution does not apply to our State, it may well be cited, because of the similarity of intent as shown by the provision in our State Constitution, and because of the judicial interpretation.

The amendment to the Federal Constitution declares that, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Mr. Cooley in his work on the Constitution states that, "The law providing for search warrants should be limited to cases of actual crime, in which the thing which was the subject or the instrument of the crime, or the supposed criminal is concealed on individual premises. The following are the most frequent cases; for property stolen, and the supposed thief; for property

brought into the country in violation of the revenue laws, etc. No doubt the right of search may be extended by statute to other offenses; but any search to obtain evidence of an intent to commit a crime can never be legalized," citing Wilkes' Case, 2 Wils. 151, and 19 State Trials. And again he states, "The latter clause of the amendment sufficiently indicates the circumstances under which a reasonable search and seizure may be made. First, *a warrant must issue;* and this implies, a law which shall point out the circumstances under which the warrant may be granted: a court or magistrate empowered by law to grant it; and an officer to whom it may be issued for service."

The reasoning of Mr. Cooley has certainly been followed from time immemorial in our state, and it is the reasoning of the common law and of the Constitution. To depart from these principles is to take an unguarded step, and one our legislature has recognized as only pertaining to the enforcement of the Prohibition Act.

To discriminate in the enforcement of our criminal laws is something never before attempted, and it seems that to do so will open the door to serious consequences. It is a step in the wrong direction, and however zealous the legislature may be to secure the enforcement of a statute, it should not do so at the sacrifice of constitutional safeguards and at the risk of destroying the well balanced system of government we now enjoy, under which magistrates and courts hear complaints, issue warrants, and officers proceed to execute mandates and are not accountable solely to themselves, as the Prohibition Commissioner's deputies and inspectors now are, for their actions.

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